

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

WHITE PLAINS HOUSING AUTHORITY

Plaintiff,
-against-

BP PRODUCTS NORTH AMERICA INC. &
MARIANINA OIL CORP.

Defendants.

**AMENDED ANSWER TO AMENDED
COMPLAINT AND DEMAND FOR JURY
TRIAL**

Case No. 17-cv-06250-NSR-JCM

The Defendant MARIANINA OIL CORP., in response to the Complaint of the plaintiff, by its attorneys, DECARO & DECARO, P.C., upon information and belief, responds as follows:

1. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 1 of the plaintiffs' Complaint.
2. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 2 of the plaintiffs' Complaint.
3. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 7 of the plaintiffs' Complaint.
4. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 8 of the plaintiffs' Complaint.
5. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 9 of the plaintiffs' Complaint.
6. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 10 of the plaintiffs' Complaint.
7. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 11 of the plaintiffs' Complaint.
8. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 12 of the plaintiffs' Complaint.

9. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 14 of the plaintiffs' Complaint.

10. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 16 of the plaintiffs' Complaint.

11. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 17 of the plaintiffs' Complaint.

12. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 18 of the plaintiffs' Complaint.

13. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 19 of the plaintiffs' Complaint.

14. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 20 of the plaintiffs' Complaint.

15. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 21 of the plaintiffs' Complaint.

16. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 22 of the plaintiffs' Complaint.

17. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 23 of the plaintiffs' Complaint.

18. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 24 of the plaintiffs' Complaint.

19. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 27 of the plaintiffs' Complaint.

20. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 37 of the plaintiffs' Complaint.

21. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 38 of the plaintiffs' Complaint.

22. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 39 of the plaintiffs' Complaint.

23. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 42 of the plaintiffs' Complaint.

24. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 43 of the plaintiffs' Complaint.

25. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 44 of the plaintiffs' Complaint.

26. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 45 of the plaintiffs' Complaint.

27. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 46 of the plaintiffs' Complaint.

28. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 47 of the plaintiffs' Complaint.

29. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 48 of the plaintiffs' Complaint.

30. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 49 of the plaintiffs' Complaint.

31. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 50 of the plaintiffs' Complaint.

32. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 51 of the plaintiffs' Complaint.

33. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 52 of the plaintiffs' Complaint.

34. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 53 of the plaintiffs' Complaint.

35. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 54 of the plaintiffs' Complaint.

36. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 55 of the plaintiffs' Complaint.

37. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 56 of the plaintiffs' Complaint.

38. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 57 of the plaintiffs' Complaint.

39. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 58 of the plaintiffs' Complaint.

40. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 59 of the plaintiffs' Complaint.

41. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 60 of the plaintiffs' Complaint.

42. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 61 of the plaintiffs' Complaint.

43. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 62 of the plaintiffs' Complaint.

44. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 63 of the plaintiffs' Complaint.

45. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 64 of the plaintiffs' Complaint.

46. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 65 of the plaintiffs' Complaint.

47. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 66 of the plaintiffs' Complaint.

48. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 67 of the plaintiffs' Complaint.

49. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 68 of the plaintiffs' Complaint.

50. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 71 of the plaintiffs' Complaint.

51. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 73 of the plaintiffs' Complaint.

52. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 74 of the plaintiffs' Complaint.

53. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 77 of the plaintiffs' Complaint.

54. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 78 of the plaintiffs' Complaint.

55. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 82 of the plaintiffs' Complaint.

56. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 83 of the plaintiffs' Complaint.

57. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 84 of the plaintiffs' Complaint.

58. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 85 of the plaintiffs' Complaint.

59. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 86 of the plaintiffs' Complaint.

60. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 87 of the plaintiffs' Complaint.

61. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 88 of the plaintiffs' Complaint.

62. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 89 of the plaintiffs' Complaint.

63. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 90 of the plaintiffs' Complaint.

64. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 91 of the plaintiffs' Complaint.

65. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 92 of the plaintiffs' Complaint.

66. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 93 of the plaintiffs' Complaint.

67. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 94 of the plaintiffs' Complaint.

68. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 95 of the plaintiffs' Complaint.

69. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 96 of the plaintiffs' Complaint.

70. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 97 of the plaintiffs' Complaint.

71. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 98 of the plaintiffs' Complaint.

72. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 99 of the plaintiffs' Complaint.

73. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 106 of the plaintiffs' Complaint.

74. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 107 of the plaintiffs' Complaint.

75. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 108 of the plaintiffs' Complaint.

76. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 109 of the plaintiffs' Complaint.

77. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 110 of the plaintiffs' Complaint.

78. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 111 of the plaintiffs' Complaint.

79. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 112 of the plaintiffs' Complaint.

80. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 113 of the plaintiffs' Complaint.

81. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 114 of the plaintiffs' Complaint.

82. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 115 of the plaintiffs' Complaint.

83. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 121 of the plaintiffs' Complaint.

84. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 123 of the plaintiffs' Complaint.

85. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 124 of the plaintiffs' Complaint.

86. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 125 of the plaintiffs' Complaint.

87. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 126 of the plaintiffs' Complaint.

88. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 131 of the plaintiffs' Complaint.

89. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 132 of the plaintiffs' Complaint.

90. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 133 of the plaintiffs' Complaint.

91. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 134 of the plaintiffs' Complaint.

92. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 135 of the plaintiffs' Complaint.

93. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 136 of the plaintiffs' Complaint.

94. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 137 of the plaintiffs' Complaint.

95. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 138 of the plaintiffs' Complaint.

96. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 140 of the plaintiffs' Complaint.

97. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 141 of the plaintiffs' Complaint.

98. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 143 of the plaintiffs' Complaint.

99. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 144 of the plaintiffs' Complaint.

100. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 145 of the plaintiffs' Complaint.

101. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 146 of the plaintiffs' Complaint.

102. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 147 of the plaintiffs' Complaint.

103. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 148 of the plaintiffs' Complaint.

104. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 149 of the plaintiffs' Complaint.

105. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 153 of the plaintiffs' Complaint.

106. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 154 of the plaintiffs' Complaint.

107. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 156 of the plaintiffs' Complaint.

108. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 157 of the plaintiffs' Complaint.

109. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 158 of the plaintiffs' Complaint.

110. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 159 of the plaintiffs' Complaint.

111. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 160 of the plaintiffs' Complaint.

112. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph number 161 of the plaintiffs' Complaint.

113. Defendant denies the allegations contained in Paragraph number 79 of plaintiff's Complaint.

114. Defendant denies the allegations contained in Paragraph number 80 of plaintiff's Complaint.

115. Defendant denies the allegations contained in Paragraph number 81 of plaintiff's Complaint.

116. Defendant denies the allegations contained in Paragraph number 163 of plaintiff's Complaint.

117. Defendant denies the allegations contained in Paragraph number 164 of plaintiff's Complaint.

118. Defendant admits allegations contained in Paragraph number 25 of plaintiffs Complaint.

119. Defendant admits allegations contained in Paragraph number 26 of plaintiffs Complaint.

120. Paragraph number 3 contains conclusions of law as to which no response is required.

121. Paragraph number 4 contains conclusions of law as to which no response is required.

123. Paragraph number 5 contains conclusions of law as to which no response is required.

124. Paragraph number 6 contains conclusions of law as to which no response is required.

125. Denies knowledge and information sufficient to form a belief as to the allegations contained in paragraph 101 and refers all questions of law to this court.

126. Denies knowledge and information sufficient to form a belief as to the allegations contained in paragraph 102 and refers all questions of law to this court.

127. Denies knowledge and information sufficient to form a belief as to the allegations contained in paragraph 103 and refers all questions of law to this court.

128. Denies knowledge and information sufficient to form a belief as to the allegations contained in paragraph 104 and refers all questions of law to this court.

129. Denies knowledge and information sufficient to form a belief as to the allegations contained in paragraph 105 and refers all questions of law to this court.

130. Denies knowledge and information sufficient to form a belief as to the allegations contained in paragraph 117 and refers all questions of law to this court.

131. Denies knowledge and information sufficient to form a belief as to the allegations contained in paragraph 118 and refers all questions of law to this court.

132. Denies knowledge and information sufficient to form a belief as to the allegations contained in paragraph 119 and refers all questions of law to this court.

133. Denies knowledge and information sufficient to form a belief as to the allegations contained in paragraph 120 and refers all questions of law to this court.

134. Denies knowledge and information sufficient to form a belief as to the allegations contained in paragraph 122 and refers all questions of law to this court.

135. Denies knowledge and information sufficient to form a belief as to the allegations contained in paragraph 128 and refers all questions of law to this court.

136. Denies knowledge and information sufficient to form a belief as to the allegations contained in paragraph 129 and refers all questions of law to this court.

137. Denies knowledge and information sufficient to form a belief as to the allegations contained in paragraph 130 and refers all questions of law to this court.

138. Denies knowledge and information sufficient to form a belief as to the allegations contained in paragraph 142 and refers all questions of law to this court.

139. Denies knowledge and information sufficient to form a belief as to the allegations contained in paragraph 151 and refers all questions of law to this court.

140. Denies knowledge and information sufficient to form a belief as to the allegations contained in paragraph 152 and refers all questions of law to this court.

141. Denies knowledge and information sufficient to form a belief as to the allegations contained in paragraphs 13,15, 28, 29, 30, 31, 32,33,34,35, 36, 39, 40, 41, 75, and 155.

142. Denies knowledge and information sufficient to form a belief as to the allegations contained in paragraphs 3, 4, 5, 6 and refers all questions of law to this court.

143. The defendant repeats all denials as to paragraphs 100, 116, 127, 139, 150 and 162.

144. The defendant Admits the allegations contained in paragraphs 69, 72, and 76.

145. The defendant denies knowledge and information sufficient to form a belief as to the allegations contained in paragraph 70, but does admit that the HES reports reflects that free product was found in the samples collected on or about January 18, 2017.

PRAYER FOR RELIEF

146. The remainder of the Complaint constitutes Plaintiff's request for relief to which no response is required. To the extend a response is required the Defendant denies that the Plaintiff is entitled to the requested relief.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

147. Any allegations against Plaintiff which are not specifically addressed are hereby denied.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

148. The Amended Complaint fails to state a claim against Marianina upon which relief can be granted.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

149. Some or all of plaintiffs' claims against Marianina are barred by the applicable statute or statutes of limitations, administrative filing periods and/or Plaintiffs' failure to satisfy the statutory prerequisites for commencing this action.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

150. The Court lacks subject matter jurisdiction over some or all of Plaintiffs' claims.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

151. Plaintiffs lack standing to maintain some or all of the claims alleged.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

152. The Court lacks subject matter jurisdiction over some or all of Plaintiffs' claims.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

153. Plaintiffs' claims are barred by the doctrines of waiver, estoppel, laches and/or unclean hands.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

154. Some or all of the relief requested by plaintiffs is not available under the applicable statutes and causes of action.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

155. Any injuries or damages alleged in the Amended Complaint were caused, in whole or in part, by Plaintiffs' own culpable, negligent or improper conduct.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

156. Plaintiffs' claims for damages are barred to the extent that they failed to take reasonable steps to mitigate damages.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

157. Without admitting that the Amended Complaint states a claim, any remedies are limited to the extent that there is sought an overlapping or duplicative recovery pursuant to the various claims for any alleged single wrong.

AS AND FOR A TWELVETH AFFIRMATIVE DEFENSE

158. With respect to all of Plaintiffs' purported claims and to the extent that Plaintiffs are successful in recovering any damages, Marianina is entitled to a setoff of, inter alia, the total amounts Plaintiffs have received from other defendant and/or polluters.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

153. No alleged act or omission of the Answering Defendants was malicious, willful, or reckless and, therefore, any award of punitive damages is barred.

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

154. With respect to Plaintiff's demand for punitive damages, the Answering Defendants specifically incorporate by reference any and all standards or limitations regarding the determination and enforceability of punitive damage awards that are set forth in *Phillip Morris USA v. Williams*, 127 S.Ct. 1057 (2007), *State Farm Mutual Automobile Insurance Co. v. Campbell*, 538 U.S. 408 (2003), *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996), and similar State cases.

AS AND FOR A FIFTHEENTH AFFIRMATIVE DEFENSE

155. Because of the lack of clear standards, any imposition of punitive damages against the Answering Defendants would be unconstitutionally vague and/or overbroad.

AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE

156. Plaintiff's claim for punitive damages is subject to the limitations and requirements of any applicable state laws.

AS AND FOR A SEVENTEENTH AFFIRMATIVE DEFENSE

157. Plaintiff does not possess a valid claim under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), as amended.

AS AND FOR A EIGHTEENTH AFFIRMATIVE DEFENSE

158. Plaintiff's claims are barred because it has failed to satisfy the prerequisites and requirements of such claims established by the National Contingency Plan.

AS AND FOR A NINETEENTH AFFIRMATIVE DEFENSE

159. Plaintiff's claims are barred because the actions allegedly undertaken by it are not and were not consistent with the National Contingency Plan.

AS AND FOR A TWENTIETH AFFIRMATIVE DEFENSE

160. Plaintiff's claims are barred or limited insofar as it seeks to recover costs, damages and expenses other than "response" costs, as that term is defined by §§ 101(23), (24), and (25) of CERCLA, as amended, 42 U.S.C. §§ 9601 (23), (24) and (25).

AS AND FOR A TWENTY-FIRST AFFIRMATIVE DEFENSE

161. Plaintiff's claims are barred against the Answering Defendants by § 107(b)(3) of CERCLA 42 U.S.C. § 9607(b)(3), and by the common law because (1) the Answering Defendants exercised due care with respect to any wastes or substances concerned; (2) all conditions, injuries, costs, damages and expenses for which plaintiffs seek to recover were caused solely by the acts or omissions of third parties other than (a) its employees or agents or (b) persons whose acts or omissions occurred in connection with a contractual relationship, existing directly or indirectly, with it; and (3) the Answering Defendants took precautions against foreseeable acts and omissions of any such third party in the consequences that foreseeably could result from such acts and omissions.

AS AND FOR A TWENTY-SECOND AFFIRMATIVE DEFENSE

162. The United States Constitution, CERCLA, and applicable state law prevent the retroactive imposition of liability, joint and several or otherwise, for acts and/or omissions of the Answering Defendants that were in compliance with applicable local, state and federal laws and regulations in effect at the time of such acts and/or omissions.

AS AND FOR A TWENTY-THIRD AFFIRMATIVE DEFENSE

163. Plaintiff's CERCLA claims are barred by the Petroleum Exclusion (*see* 42 U.S.C.A. 9601(14)).

AS AND FOR A TWENTY-FOURTH AFFIRMATIVE DEFENSE

164. Plaintiff does not possess a valid claim under the Resource Conservation and Recovery Act of 1976, as amended.

AS AND FOR A TWENTY-FIFTH AFFIRMATIVE DEFENSE

165. The Answering Defendants reasonably and adequately addressed, and continue to address, any environmental issues that plaintiff alleges are affecting its property.

AS AND FOR A TWENTY-SIXTH AFFIRMATIVE DEFENSE

166. The Answering Defendants were not provided with a reasonable and adequate opportunity to cure the defect alleged by the Plaintiff.

AS AND FOR A TWENTY-SEVENTH AFFIRMATIVE DEFENSE

167. Plaintiff improperly refused and denied access to remediate the discharges that are the subject of this action and otherwise obstructed the remediation for their own financial advantage.

AS AND FOR A TWENTY-EIGHTH AFFIRMATIVE DEFENSE

168. Plaintiff cannot establish that there is, has been or will be a substantial endangerment to health or the environment as those terms are defined in Section 7002(a)(1)(B) of RCRA.

AS AND FOR A TWENTY-NINTH AFFIRMATIVE DEFENSE

169. Plaintiff cannot establish that there is, has been or will be an imminent endangerment to health or the environment as those terms are defined in Section 7002(a)(1)(B) of RCRA.

AS AND FOR A THIRTEETH AFFIRMATIVE DEFENSE

170. Plaintiff cannot establish that there is, has been or will be reasonable cause of concern that someone or something may be exposed to risk or harm if remedial action is not taken.

AS AND FOR A THIRTY-FIRST AFFIRMATIVE DEFENSE

171. Plaintiff fails to join a party or parties necessary for the just and equitable adjudication of Plaintiff's claims.

AS AND FOR A THIRTY-SECOND AFFIRMATIVE DEFENSE

172. Plaintiff's claims are estopped because they are arbitrary and capricious and inconsistent with the actions and inactions of the New York State Department of Environmental Conservation.

AS AND FOR A THIRTY-THIRD AFFIRMATIVE DEFENSE

173. The Answering Defendants deny that they are liable for any claims alleged in the Amended Complaint, but in the event they are found liable, the Answering Defendants are entitled to an offset against said alleged liability for the greatest of (1) any amounts actually paid by any person or entity heretofore or hereinafter for any of the injuries, costs, damages and expenses alleged in the Amended Complaint, or (2) any amounts stipulated or otherwise agreed to in any release or covenant not to sue any person or entity heretofore or hereinafter for any of the injuries, costs, damages and expenses alleged in the Third Amended Complaint; or (3) the applicable share of the liability of any person or entity that heretofore has received, or hereafter receives, any release from liability or covenant not to sue with respect to injuries, costs, damages and expenses alleged in the Complaint.

AS AND FOR A THIRTY-FOURTH AFFIRMATIVE DEFENSE

174. The plaintiff cannot recover from each Answering Defendant more than each Answering Defendant's fair, equitable and proportionate share of the costs, damages and other expenses sought by plaintiffs, or otherwise recover more than the amount of such relief for which each Answering Defendant may be liable.

WHEREFORE, Marianina respectfully requests that the Court dismiss the Plaintiff's Amended Complaint and grant to Marianina such other and further relief as this Court deems just and proper.

REQUEST FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedures 38, Answering Defendant respectfully requests that this matter be tried by jury.

Dated: Harrison, NY

January 28, 2018

By: s/ Philip A. DeCaro
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